

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA**

AGTEGRA COOPERATIVE

Plaintiff,

v.

MERITUM ENERGY HOLDINGS, LP

Defendant.

CIVIL ACTION

NO. 1:23-cv-1014

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, AGTEGRA COOPERATIVE (“Agtegra”), by and through its undersigned counsel, demands judgment against Defendant, Meritum Energy Holdings, LP (“Defendant”), and complains against it as follows:

JURISDICTION AND VENUE

1. Jurisdiction for Plaintiff is based on 28 U.S.C. § 1332(a)(1) as this action involves a controversy between citizens of different states. Moreover, the amount in controversy exceeds \$75,000 (exclusive of interest and costs).
2. Venue is proper in this district based on 28 U.S.C. § 1391(b)(2) in that the events giving rise to this claim occurred within this district.

PARTIES

3. Agtegra is a farmer-owned grain, agronomy and energy cooperative with its principal place of business in Aberdeen, South Dakota, that provides services to farmers in South Dakota and North Dakota.
4. Defendant Meritum Energy Holdings, LP (“Meritum”) is a foreign limited partnership which is in the business of fuel distributions and energy solutions, which does

business in South Dakota and which provided routine tank filling services at the property owned by Agtegra.

STATEMENT OF FACTS

5. On or about late November, 2019, Agtegra contracted with Meritum to fill Agtegra's propane tank on its property at Kennebec, South Dakota by filling the tank with propane, and Meritum subsequently began such work.

6. Unbeknownst to Agtegra, during this service, Meritum used a transport tanker contaminated with water to fill Agtegra's propane tank at Kennebec, South Dakota, which caused water contamination to enter Agtegra's system, and subsequently the water was transferred throughout the rest of Agtegra's gas system, as gas was being used by the grain dryer.

7. Meritum's actions resulted in damage to Agtegra's property, the incursion of third-party repair and service fees, loss in value of and expenses involving Agtegra's grain at its Kennebec, South Dakota location, among other expenses and harm to Agtegra.

8. Upon investigation, it is believed that the Meritum transport tanker did not empty out completely after a scheduled pressure hydrostatic testing procedure and was contaminated when it serviced Agtegra's propane tank on its property at Kennebec, South Dakota.

9. As a result of the damage described above, Agtegra incurred in excess of seventy-five thousand dollars (\$75,000.00) in damages.

COUNT I - NEGLIGENCE

10. Each of the above allegations is incorporated by reference as if stated herein.

11. Upon being contracted by Agtegra to perform tank filling services at Agtegra, Meritum owed a duty to use reasonable care in completing said services.

12. That Meritum breached such duties by negligently and improperly filling Agtegra's tank.

13. That as a direct and proximate result of Meritum's negligence described above, Agtegra suffered damages in the amount in excess of \$75,000.

COUNT II – BREACH OF CONTRACT

13. Each of the above allegations is incorporated by reference as if stated herein.

14. Meritum entered into a contract with Agtegra, whereby Meritum agreed to perform its tank filling services in an acceptable manner.

15. Meritum breached its contract with Agtegra when it failed to perform the tank filling services in an acceptable manner, whereby causing damage to Agtegra's property.

16. That as a direct and proximate result of Meritum's breach of contract as described above, Plaintiff suffered damages in an amount in excess of \$75,000.00.

WHEREFORE, Plaintiff AGTEGRA COOPERATIVE prays for judgment against Defendant MERITUM ENERGY HOLDINGS, LP in an amount in excess of \$75,000 with prejudgment interest thereon, their costs and disbursements herein, and for such other and further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

By: s/Steven L. Theesfeld
Steven L. Theesfeld (#4255)
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Minneapolis, MN 55402
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Dated: June 5, 2023

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

AGTEGRA COOPERATIVE.

(b) County of Residence of First Listed Plaintiff Brown County, SD
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Yost & Baill, LLP
220 S. 6th Street, Suite 2050, Minneapolis, MN 55402

DEFENDANTS

MERTIUM ENERGY HOLDINGS, LP

County of Residence of First Listed Defendant Tarrant County, TX
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:

Defendant's services caused damage to Plaintiff's property.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** 75,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

06/05/2023

SIGNATURE OF ATTORNEY OF RECORD

s/Steven L. Theesfeld

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____